



ENVIRONMENTAL PROTECTION AGENCY
[FRL 9719-8]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of Proposed Settlement Agreement; Request for Public Comment

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (“CAA”), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address lawsuits filed by the Imperial County Air Pollution Control District and the California Department of Parks and Recreation (together, “Petitioners”) in the United States Court of Appeals for the Ninth Circuit: Imperial County Air Pollution Control District v. EPA, No. 10-72709 (9th Cir.) and California Department of Parks and Recreation v. EPA, No. 10-72729 (9th Cir.). Petitioners filed petitions for review challenging EPA’s final rule, approving in part and disapproving in part, a state implementation plan (“SIP”) submission made by the California Air Resources Board on behalf of the Imperial Valley Air Quality Control District. The SIP submission at issue included local pollution control measures intended to address emissions of PM10 from sources located within the Imperial Valley Planning Area referred to as Imperial County Air Pollution Control District Rules 800 through 806 (“Regulation VIII”). The proposed settlement agreement establishes deadlines for both the Imperial Valley Air Pollution Control District and EPA to take specified actions to resolve the lawsuits.

DATES: Written comments on the proposed settlement agreements must be received by [insert date 30 days after publication date].

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2012-0644, online at www.regulations.gov (EPA’s preferred method); by e-mail to

oei.docket@epa.gov; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Geoffrey L. Wilcox, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-5601; fax number (202) 564-5603; email address: wilcox.geoffrey@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional information about the proposed settlement agreement.

The California Air Resources Board (“CARB”), on behalf of the Imperial Valley Air Pollution Control District (the “District”), made a SIP submission to EPA containing Regulation VIII as a SIP revision intended to address emissions of PM₁₀ from certain sources located within the Imperial Valley PM₁₀ nonattainment area. EPA approved this submission in part, and disapproved it in part, based upon EPA’s evaluation of the submission itself and evaluation of related claims by the District that monitor data on certain days should be treated as “exceptional events” and thus excluded from regulatory determinations. 75 Fed. Reg. 39,366 (July 8, 2010). The District and the California Department of Parks and Recreation (“Parks”) challenged EPA’s partial disapproval of the submission and EPA’s related actions on the claimed exceptional events. These

challenges were filed in the United States Court of Appeals for the Ninth Circuit (the “Court”) in Imperial County Air Pollution Control District v. EPA, No. 10-72709 (9th Cir.) and California Department of Parks and Recreation v. EPA, No. 10-72729 (9th Cir.).

The Court heard oral argument on the consolidated challenges on February 15, 2012. On February 17, 2012, the Court issued an Order that referred the case to mediation and stayed further proceedings on the case pending such mediation. Thus, at the suggestion of the Court, EPA, the District, and Parks engaged in settlement discussions to determine whether the legal and factual disputes at issue in the litigation could be resolved through a settlement agreement. This notice describes and seeks comment on the proposed settlement agreement that the parties have negotiated.

The proposed settlement agreement establishes deadlines for both the District and EPA to take specified actions to resolve the litigation. The objective of the parties in the settlement agreement is to address the underlying legal and factual disputes in a way that will be more effective and efficient to achieve the overarching goals of meeting CAA requirements and improving air quality in the Imperial Valley PM10 nonattainment area. Thus, both the District and EPA propose to agree to take a series of actions by set deadlines that will result in a resolution of the legal and substantive concerns with Regulation VIII that were the basis for EPA’s partial disapproval. In particular, the District and EPA propose to agree to take actions on an expedited schedule in order to assure that appropriate revisions to Regulation VIII are in place in the SIP quickly.

First, the proposed settlement agreement requires that within ninety (90) days of execution of the agreement, the District must revise Regulation VIII and submit it along with supporting documentation to the District’s Governing Board. These revisions must

be substantially the same as those set forth in Attachment B to the settlement agreement. Attachment B reflects revisions intended by the parties to resolve the legal and substantive concerns with Regulation VIII that were the basis for EPA's partial disapproval. It is understood that these revisions must still meet all local, state, and federal administrative process and substantive requirements before they are deemed to meet applicable requirements and could be incorporated into the SIP for the Imperial Valley PM10 nonattainment area.

Second, the proposed settlement agreement requires that within fourteen (14) days of the Governing Board's adoption of the revised Regulation VIII rules, the District must submit the revised Regulation VIII rules to CARB for expedited submittal to EPA for incorporation into the California SIP.

Third, the proposed settlement agreement requires that within sixty (60) days of submittal by CARB, EPA must sign for publication in the Federal Register a notice of proposed rulemaking that proposes taking action on the submission pursuant to CAA section 110(k), 42 U.S.C. 7410(k). If the revised Regulation VIII is substantially the same in substance as set forth in Attachment B, the notice to be signed by EPA must propose full approval of the submission pursuant to CAA sections 110(k) and 189(b)(1)(B), 42 U.S.C. 7410(k), 7513a(b)(1)(B).

Fourth, if EPA proposes full approval, then within the notice of proposed rulemaking EPA must make a statement that EPA's preliminary view is that the revised Regulation VIII will constitute "reasonable control" of the sources covered by Regulation VIII for the purpose of evaluating whether an exceedance of the PM10 NAAQS is an "exceptional event" including reasonable and appropriate control measures on significant

contributing anthropogenic sources. This statement will not extend to exceedances of NAAQS other than the PM10 NAAQS, or to events that differ significantly in terms of meteorology, sources, or conditions from the events that were at issue in the litigation.

Fifth, if EPA proposes full approval of the revised Regulation VIII, EPA must also sign for publication in the Federal Register a notice making an interim final determination to defer imposition of sanctions pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(1) pending public comments on the proposed action.

Sixth, within sixty (60) days of the close of public comment on the proposed action, EPA must sign for publication in the Federal Register a notice of final rulemaking that takes final action on the submission containing the revised Regulation VIII pursuant to CAA section 110(k), 42 U.S.C. 7410(k). Thereafter, EPA must promptly deliver the notice of final rulemaking to the Office of Federal Register for review and publication.

The proposed settlement agreement also contains various provisions that will govern what may happen if either the District or EPA fails to meet the terms of the agreement.

For a period of thirty (30) days following the date of publication of this notice, EPA will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if these comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CAA. Unless EPA or the Department of Justice determines that consent to this settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional information about commenting on the proposed settlement agreement.

A. How Can I Get A Copy Of the Settlement Agreement?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2012-XXXX) contains copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through www.regulations.gov. You may use www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will

not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of

your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 14, 2012

Lorie J. Schmidt
Associate General Counsel

[6560-50-P]

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